BRIEFING

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International Private Client Update on the Budget and Finance (No.2) Act 2017

This briefing focuses on recent developments and announcements affecting non-domiciled, non-resident and/or individuals with offshore assets.

UK property

A significant announcement in the Budget was that commercial property will be brought into the scope of Capital Gains Tax (CGT) for non-resident owners. This measure will take effect from April 2019, and it will only be post April 2019 gains that will be taxable. Gains will be subject to tax at either the CGT rate for individuals (currently 20% for non-residential or 28% for residential property) or corporation tax rate for companies (currently 19%, falling to 17% in April 2020). Whilst residential property has been subject to UK CGT since April 2013 or April 2015, this announcement affecting commercial property was unexpected.

From April 2020, non-resident companies will also be brought within the scope of corporation tax, rather than income tax (currently 20%), when charging rental profits from UK real estate. This will result in a small reduction in the rate of tax applied (as the corporation tax rate is due to fall to 17% in 2020). This change will also affect the filing requirements of such non-resident companies.

The Finance (No.2) Act 2017 (FA No.2) received Royal Assent on 16 November 2017 and brought interests in UK residential property, and loans made to acquire UK residential property, within the scope of UK Inheritance Tax (IHT), *with retroactive effect from 6 April 2017*. For the time being, there have been no similar announcements regarding commercial property, and so the use of offshore structures can still be effective IHT planning for commercial property.

For UK residential property, offshore companies will generally not offer IHT protection but can still be subject to the Annual Tax on Enveloped Dwellings (ATED). It is important that property holding structures are reviewed so that ATED, and indeed the ongoing costs of running a structure, are only being paid if it is still worthwhile to do so. There will often be UK tax consequences to restructuring, and so professional advice should be obtained. The Budget confirmed that ATED rates will be increasing from 1 April 2018 (as set out below). It is also important to note that the valuation date for ATED from 1 April 2018 will be 1 April 2017. This means that several properties that were valued as below the ATED threshold when ATED was first introduced in 2013 (using a 1 April 2012 valuation date), will now be caught by ATED if they were worth over £500,000 as at 1 April 2017.

Property Value	ATED 2017/18 Chargeable Amounts	ATED 2018/19 Chargeable Amounts
£500,001 to £1,000,000	£3,500	£3,600
£1,000,001 to £2,000,000	£7,050	£7,250
£2,000,001 to £5,000,000	£23,550	£24,250
£5,000,001 to £10,000,000	£54,950	£56,550
£10,000,001 to £20,000,000	£110,100	£113,400
£20,000,0001 and over	£220,350	£226,950

Measures to combat Tax Avoidance

There will be a consultation in Spring 2018 with a view to extending the time limit within which HMRC can assess a tax liability to at least 12 years, even where there has been no deliberate misconduct on the part of the taxpayer, if the liability arises offshore. The current rules only enable HMRC to go back to the previous 4 years, extended to 6 years where the taxpayer was careless and up to 20 years where the behaviour causing the liability was deliberate. The extension to 12 years regardless of the conduct of the taxpayer will have a very broad impact given that so many individuals (not just non-resident and/or non-domiciled individuals) own non-UK investments.

This consultation builds on existing measures, including the now enacted Requirement To Correct, which gives UK taxpayers with non-UK assets a deadline of 30 September 2018 before which to come forward to correct any past inaccuracies. After this deadline such taxpayers will face much harsher penalties, and so we strongly recommend that anyone with any doubts as to their historic position obtains professional advice now.

Offshore Trusts

Our previous briefing (see link) covered the changes in FA No.2 that take effect from 6 April 2017. As previously mentioned, new anti-avoidance rules will be introduced from 6 April 2018 to ensure that payments from an offshore trust intended for a UK resident individual do not escape tax when they are made via an overseas beneficiary or a remittance basis user. It will also no longer be possible to match and “wash out” offshore trust gains by making capital payments to non-resident beneficiaries.

Non-Doms – Rebasing and Cleansing Mixed Funds

As discussed in our previous briefing, there are time limited opportunities for some non-domiciled individuals to take advantage of, including the rebasing of assets for individuals who are now deemed domiciled in the UK for tax purposes (as they have been UK resident for more than 15 out of the previous 20 tax years), and the opportunity to separate a mixed bank account into clean capital, capital gains and income. For the cleansing exercise, it is important that to the extent possible, the exact amounts that have been added to the bank account and the sources of payments are ascertained. If precise records have not been kept, decisions have to be made about how best to take advantage of this opportunity and avoid pitfalls due to the way the legislation has been drafted. We recommend professional assistance is sought for this exercise.

Formerly Domiciled Residents (FDR)

As covered in our previous briefing, individuals born in the UK with a domicile of origin but who subsequently claim to have lost their UK domicile, will be treated as FDRs whilst they are UK resident. The FA No.2 enacted these measures with effect from 6 April 2017. It used to be common for such individuals whilst working abroad during the 70s, 80s and 90s to establish offshore “excluded property trusts” to protect assets from IHT. The new rules pull such offshore trusts back into the scope of IHT (under the relevant property regime) whilst the settlor is alive and an FDR (and after one year of UK residence). If the FDR has not been excluded from benefiting from the trust, the entire trust fund would still be treated as forming part of his personal estate potentially subject to 40% IHT on his death, without the benefit of any spouse exemption. It should be noted that to effectively exclude an FDR settlor now would require the settlor to survive his exclusion by seven years.

Please contact a member of the International Private Client Team to discuss any of these developments in more detail.

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